

MILMAN LABUDA LAW GROUP PLLC
3000 MARCUS AVENUE
SUITE 3W8
LAKE SUCCESS, NY 11042

TELEPHONE (516) 328-8899
FACSIMILE (516) 328-0082

Author: Jamie S. Felsen – Member
Direct E-Mail Address: jamiefelsen@mllaborlaw.com
Direct Dial: (516) 303-1391

June 21, 2022

Via ECF

Hon. Therese Wiley Dancks, U.S.M.J.
United States District Court Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway, Room 112
Albany, NY 12207

RE: Deanna Carollo, et. al. v. United Capital Corp., et. al.
Docket No.: 16-CV-0013
MLLG File No.: 24-16

Dear Judge Dancks:

This firm represents the Defendants in the above-referenced matter and Defendants submit this letter in accordance with the Court's June 16, 2022 Order directing Defendants to provide a status report concerning five (5) topics.

First, Ellen Callas' deposition is scheduled for June 30, 2022 at 9:30 am.

Second, Ana Diaconu has been designated to testify about attempts to provide Plaintiffs with payroll data in excel format and on a weekly basis for those periods where employees were not paid weekly. Her deposition is scheduled for June 29, 2022 at 9:30 am. Ms. Diaconu will have access to the ADP system during the deposition.

Third, despite Michael McCurdy being designated and testifying as Defendants' 30(b)(6) witness for all topics in the 30(b)(6) notice for the entire statutory period leading up to his deposition back on March 24, 2017, now, more than five years later, Plaintiffs are requesting to depose Mr. McCurdy (who has not worked for any of the corporate defendants for four years and no longer resides in New York) again or to depose another individual regarding a portion of the period for which Mr. McCurdy testified. On February 3, 2017, Defendants responded to Plaintiffs' 30(b)(6) notice served on November 15, 2016 by designating Mr. McCurdy as their 30(b)(6) witness. **(A copy of the February 3, 2017 e-mail is annexed hereto as Exhibit "A")**. Following the deposition, and for the next five (5) years thereafter, Plaintiffs did not assert that Mr. McCurdy was unable to testify about the topics covered in the 30(b)(6) notice. If Mr. McCurdy was unable to testify about certain periods, Plaintiffs would have brought the issue up after his deposition or in opposition to Defendants' motion for summary judgment. They did not because he was a

Hon. Therese Wiley Dancks, U.S.M.J.
United States District Court Northern District of New York
June 21, 2022
Page | 2

properly designated 30(b)(6) witness. Plaintiffs continue to add attorneys to this case with each one devising new strategies. The purpose of the instant ploy is to give Plaintiffs a second bite at the apple to address deposition questions their prior attorney failed to ask Mr. McCurdy that their new attorney wants to develop. Plaintiffs have taken four 30(b)(6) depositions. No more depositions should be permitted other than Ms. Callas and Ms. Diaconu and no more discovery should be permitted.

Fourth, Defendants have already produced to Plaintiffs time records in excel for 142 class members who were banquet servers and restaurant servers. These excel records were previously prepared and took significant time to prepare as they required Defendants to search archives and search records by each employee and create a new excel for each employee. Defendants are in the process of preparing time records in excel for the additional 250 class members who are not members of the banquet server and restaurant server class. However, it will take significant time and will not be able to be completed by the June 23, 2022 deadline. Defendants request an extension of time until July 8, 2022 to provide this given the significant amount of time required to prepare same. Defendants will produce records as they are completed.

Fifth, with regard to the directive for Defendants to provide a date by when they will be able to produce records in excel identifying the service charges paid to each banquet server, an individual who will be able to determine if said documents exist will be at the Hotel on June 21-22, 2022 and Defendants expect to have an answer as to whether said documents exist and a date by when they can produce same, if any exist, by June 22, 2022.

Respectfully submitted,

/s/ Jamie S. Felsen

cc: All Counsel of Record (via ECF)